use" in the state during the year has been upheld in the case of sleeping cars, *Pullman Car Co.* v. *Hayward* (1891) 141 U. S. 36, 11 Sup. Ct. 883; refrigerator cars, *American Refrigerator Trans. Co.* v. *Hall* (1899) 174 U. S. 70, 19 Sup. Ct. 599, and other cars owned by an independent company and leased to the railroad. A tax on the rolling stock, taking as a basis of assessment such proportion of the capital of the company as the number of miles of railroad over which the cars pass in the state bear to the whole number of miles traversed in the whole country, has been approved. *Pullman Car Co.* v. *Pennsylvania, supra.* This unit rule or mileage basis of apportionment has, upon the reasoning of the last cited case, been upheld for the taxation of a railroad, including its rolling stock, *Pittsburgh etc. R. R.* v. *Backus* (1894) 154 U. S. 421, 14 Sup. Ct. 1114, of an interstate express company, *Adams Exp. Co.* v. *Ohio* (1897) 166 U. S. 185, 17 Sup. Ct. 604, and in the taxation of a telegraph company. *Western Union Tel. Co.* v. *Taggart* (1896) 163 U. S. 1, 16 Sup. Ct. 1054. In the application of the unit rule in the above cases an attempt was made to get at the real value of property to be taxed and the results were approximately correct. But where the unit rule is applied without any regard to the real value of the property taxed, either of the physical value or of the worth as a part of a going business, and the result reached is entirely out of proportion to such actual value, its application would seem unconstitutional. Judson, Taxation §§ 273, 275, 462; see *Wells Fargo & Co.* v. *Crawford County* (1897) 63 Ark. 576, 40 S. W. 710. The instant case so held and may be considered as marking out this limitation on the use of the unit rule.

CONTEMPT—PERJURY—OBSTRUCTIVE EFFECT—POWER TO PUNISH.—A witness, who swore that he did not remember a fact, was committed for contempt until he should consent to give testimony which, in the opinion of the court, was not perjured. *Held,* Justice Pitney dissenting, the commitment was void for excess of judicial power because it was imposed for the supposed perjury alone without reference to any circumstances giving to it an effect obstructive to the performance of the judicial duty. *Ex parte Hudgings* (1919) 39 Sup. Ct. 337.

Contempt may involve either of two ideas: see *In re Fellerman* (D. C. 1906) 149 Fed. 244; (1) disregard of the power of the court, in that lawful orders to testify have not been obeyed; *United States* v. *Appel* (D. C. 1913) 211 Fed. 495; *Berkson* v. *People* (1894) 154 Ill. 81, 39 N. E. 1079; *cf. Ex parte Creasy* (1912) 243 Mo. 679, 148 S. W. 914; (2) disregard of the authority of the court, in that the jurisdiction of the court to declare the law and adjudicate the rights of the parties is hindered, prevented, or set at naught, as by perjury, *In re Ulmer* (D. C. 1913) 208 Fed. 461; *In re Steiner* (D. C. 1912) 195 Fed. 299, or by subornation of perjury. *Ricketts* v. *State* (1903) 111 Tenn. 380, 77 S. W. 1076; see *Beattie* v. *People* (1889) 33 Ill. App. 651. A few jurisdictions regard perjury as a substantive offense only and hold that, since a witness so charged has a right to trial by jury, the court has no power to punish for contempt because this

would permit the court to displace the jury. *In re Lerch's etc. Election* (1912) 21 Pa. Dist. 1113; *State* v. *Lazarus* (1885) 37 La. Ann. 314. Likewise, under the New York Code, false swearing by a judgment debtor on his examination in supplementary proceedings is not contempt for which he may be punished, unless "a right or remedy of a party litigant may be thereby defeated." *Bernheimer* v. *Kelleher* (1900) 31 Misc. 464, 64 N. Y. Supp. 409; N. Y. Code Civ. Proc. § 14; N. Y. Consol. Laws c. 30, § 753. By substantial authority, however, it seems certain that the crime of perjury does not merge the contempt, which is a separate and distinct wrong against the court as an organ of public justice, punishable by the court on summary conviction. *In re Steiner, supra; In re Fellerman, supra.* Fear that the power to punish for contempt would be a "potentiality for oppression", if the court were allowed to judge the falsity of testimony, prompted the holding in the instant case. It is submitted that the court erred in its failure to recognize that perjury, by its inherent nature, aims to thwart justice, to mould judicial opinion by lies, to hoodwink juries by fraud. Practically, it is impossible to determine how much weight has been given to perjured, apart from honest testimony. Moreover, even if the judge or the jury sees through the mendacity, the perjurer has nevertheless attempted to pervert the course of justice, and this act alone constitutes contempt and warrants summary punishment. The real danger to which the court alluded can be obviated by restricting the court's power to cases in which a witness makes an admission of perjury or in which the evidence of it is unquestionable. See *People* v. *Stone* (1912) 181 Ill. App. 475.

CONTRIBUTORY NEGLIGENCE—CHILDREN—PARENT'S NEGLIGENCE NOT IMPUTED TO CHILD.—The plaintiff, aged five, while crossing a street with his brother, aged seven, was injured by a motorcycle negligently ridden by an employee of the defendant. *Held,* the contributory negligence of the mother in allowing him to be exposed to the dangers of the street was not to be imputed to the child. *Zarzana* v. *Neve Drug Co.* (Cal. 1919) 179 Pac. 203.

Courts are divided on the question whether a parent's negligence can be imputed to his child so as to bar a recovery by the latter. See *Warren* v. *Manchester St. Ry.* (1900) 70 N. H. 352, 47 Atl. 735. The English rule is that a parent's negligence is so imputable. 1 Thompson, Negligence §§ 289, 290; *Waite* v. *North Eastern Ry.* (1858) El., Bl. & El. 719. In the United States, some courts follow the "New York Rule," see *Hartfield* v. *Roper* (N. Y. 1839) 21 Wend. 615, which bars recovery, 1 Thompson, *op. cit* §§ 292 *et seq.; Fitzgerald* v. *St. Paul, M. & M. Ry.* (1882) 29 Minn. 337, 13 N. W. 168, but the "Vermont Rule," *Robinson* v. *Cone* (1850) 22 Vt. 213, which allows recovery, is more generally followed. *Chicago City Ry.* v. *Wilcox* (1891) 138 Ill. 370, 27 N. E. 899; *Chicago G. W. Ry.* v. *Kowalski* (C. C. A. 1899) 92 Fed. 310; *Mullinax* v. *Hord* (1917) 174 N. C. 607, 94 S. E. 426. The former rule is based on the argument that an infant plaintiff must exercise the same degree of care as an adult, and, as a child is not *sui juris,* the care which is required of him must be exercised